

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI –ABUJA**

HIS LORDSHIP: HON. JUSTICE M.S. IDRIS

COURT NUMBER: 28

Date: - 16TH NOVEMBER, 2023

FCT/HC/CV/2778/2021

BETWEEN

OKPECHUKWU CHIDOZIE KEVIN-----

CLAIMANT

AND

1. EMMANUEL C. NNAKWE

2. EMMANUEL ODOGWU

3. UKPORO HUMPHREY

DEFENDANTS

JUDGMENT

This Judgment is in respect of an action at the instance of the Claimant, brought by way of a Writ of Summons filed on October 22, 2021 together with supporting documents as prescribed by law and seeking the following reliefs to wit:-

1. A Declaration that the Claimant is the rightful owner of Shop No. Z10, Ave Maria Plaza, Kugbo Motor Spare Parts Market, Kugbo, Abuja.

2. An Order of this Court awarding the immediate vacant possession of Shop No. Z10, Ave Maria Plaza, Kugbo Motor Spare Parts Market, Kugbo, Abuja.
3. An order of this Court awarding the sum of ~~N~~450,000.00 (Four Hundred and Fifty Thousand Naira) only in favour of the Claimant, against the Defendants, the amount being the arrears of rent for the period of the 16th of December 2019 till the 15th of December 2020.
4. An order of this Court awarding the sum of ~~N~~58,333.33k (Fifty-Eight Thousand, Three Hundred, and, Thirty - Three Naira, Thirty-Three Kobo) only per month, commencing on the 16th of December 2020 till possession is yielded in favour of the Claimant against the Defendants.
5. An order of this Court awarding the sum of ~~N~~10,000,000.00 (Ten Million Naira) only as general damages in favour of the Claimant against the Defendants for the mental torture and emotional trauma which the Defendants caused the Claimant.
6. And for such further order or orders that this Court will deem fit to make or give in the circumstances.

Upon service of the Originating processes on the Defendants, they entered appearance, filed their Defence as well as Counter-

claimed against the Claimant and 2nd Defendant to Counter-claim seeking the following reliefs:-

1. A Declaration that there is an oral agreement between the 2nd and 3rd Counter-claimants and the 1st Defendant to Counter-claim to jointly purchase shop Z10, Ave Maria Plaza, in Kugbo Motor Spare Parts Market.
2. A Declaration that the 1st Defendant to Counter-claim has breached the agreement by refusing to communicate the terms of the agreement to the 2nd Defendant to Counter-claim
3. An order of specific performance against the 1st Defendant to Counter-claim to abide by the terms of the Agreement entered into with the 2nd and 3rd Defendants.
4. An order of the Court directing the 2nd Defendant to Counter-claim to issue receipts and a joint Deed of Assignment in respect of Shop Z10, Ave Maria Plaza in Kugbo Spare Parts Market in favour of the 2nd and 3rd Counter-claimants and the 1st Defendant to counter-claim all of who contributed to the purchase of the shop.
5. The sum of N500,000.00 (Five Hundred Thousand Naira Only) against the 1st Defendant to Counter-claim as cost of this suit.

In response, the Claimant and 1st Defendant to Counter-claim filed his Reply to the Defendants Defense and incorporated a Defense to the Counter Claim of the Defendants/Counter

Claimants on 14th June, 2022. The 2nd Defendant to Counter Claim also entered appearance and filed her Defense to Counter Claim on 26th October, 2022.

On the basis of the pleadings of all Parties herein, trial commenced and the Claimant testified and the following documents were tendered in support of his case:-

1. 6 Months Notice to the Defendants – (Exhibit 1)
2. 7 days Notice to Quit (Exhibit 2)
3. 7 days Notice to Quit (Exhibit 3)
4. 7 days Notice to Quit (Exhibit 4)
5. 7 days Notice of Owners intention to apply to Court to recover possession (Exhibit 5)
6. Power of Attorney and Deed of Assignment (Exhibit 6)

The 1st and 2nd Defendants also testified and the following documents were tendered through the 2nd Defendant:-

1. Igbo version of CD Communication – Exhibit DW1
2. English Version of CD Communication- Exhibit DW2
3. Photocopies of Tellers from UBA Bank- DW3
4. 7 Email Correspondences- Exhibit DW4

After the close of the case of the Defendants, the 2nd Defendant to Counter-claim testified and was cross examined by Counsel to the Defendants/Counter Claimants and equally Counsel to the

Claimant/1st Defendant to Counter Claim. On the basis of the close of the case of all parties, parties filed and adopted their Final Addresses, including the Counter Claimants Reply to the 2nd Defendant to Counter Claim's Final Address on 29th September, 2023.

CLAIMANT/1ST DEFENDANT TO COUNTER CLAIMS ARGUMENT:

The Claimant formulated two issues for determination to wit:-

1. Whether parties before this Court will succeed based on the preponderance of evidence before the Court or on the facts that are probably true
2. Whether from the conduct of the Defendants, paying monies into the Bank account of the vendor of Shop No. Z10 separately, without jointly negotiating with the vendor disclose an intention to jointly purchase Shop Z10 Ave Maria Plaza, Kugbo Motor Spare Parts Market, Kugbo, Abuja.

In arguing these issues, the Claimant submitted that from the evidence adduced before the Court, the Case of the Claimant is more probable, noting that the Claimant has been able to establish firmly his root of title to entitle him to a declaration of right to title over the Property in dispute. He also relied on the Case of ***OKERE V. FASHAWE (2005) 12 MJSC 68***, in urging the Court to hold that he has discharged the burden of proof placed

on him by law. The Claimant also maintained that he was not *ad idem* with the Defendants concerning the joint purchase of the disputed property and that the allegations of the Defendants/Counter Claimants ought to be jettisoned by the Court. Further relying on the case of **ODUYE V. NIG AIRWAYS LTD (1987) 2 NWLR (PT 55) 126** the Claimant pointed that it is not the duty of the Court to write or re-write contract for the parties to the Suit and on the whole urged the Court to resolve the issues formulated in his favour.

DEFENDANTS/COUNTER CLAIMANTS ARGUMENTS:

The Defendants/Counter Claimants formulated two issues for the determination of the Case to wit:-

1. Whether an Oral agreement is effective, recognizable and can have legal force to bind the parties to it in law
2. Whether the Defendants/Counter Claimants are entitled to specific performance of the terms of the oral agreement.

In arguing these issues raised, the Defendants/Counter Claimants relying on the case of **INJI V. ISA (2022) LPELR-59193 (CA)** stated that indeed contracts could be in oral forms and must not always be written down. They contended that indeed there existed an oral agreement between them and the Claimant/1st Defendant to Counter Claim to jointly purchase the

disputed Property. They submitted that both the Claimant and 2nd Defendant to Counter Claim derived benefits from the agreement and so the Court ought not allow them resile from the contract voluntarily entered into by them. The Defendants/ Counter Claimants further argued that having proved the existence of a contract between them, the Claimant and the 2nd Defendant to Counter Claim, they are due to the remedy of Specific Performance and urged the Court to so hold.

2ND DEFENDANT TO COUNTER CLAIM'S ARGUMENT:

On his part, Counsel formulated two issues germane to the determination of the case to wit:-

1. Whether by the evidence presented before the Court together with the exhibit tendered, the Counter Claimants have established the existence of any legal contract of sale of the said Shop Z10 between the 2nd Defendant to Counter Claim and the Counter Claimants”
2. Whether the Counter Claimants are entitled to the reliefs sought under the counter claim”

Counsel relying on the case of ***NJIKONYE V. MTN (NIG) COMM. LTD (2008) 9 NWLR (PT. 1092) 339*** highlighted the importance of the elements of a valid contract which will be enforceable by a Court of law. He noted that there must be an Offer, acceptance,

consideration, intention to create a binding agreement and capacity. Counsel went on to submit that the Counter Claimants have failed to establish the existence of a legally recognized contract in respect of the disputed property. Furthermore, Counsel noted that since the Defendants/Counter Claimants have not been able to prove the existence of a contract between them and the 2nd Defendant to Counter Claim, their claim for specific performance of the contract must necessarily fail. On this point, Counsel relied on the case of ***A.G FEDERATION V. A.I.C. LTD (2000) 4 WRN 96***. Counsel relying on the case of ***BAIRD TEXTILE HOLDINGS V. MARKS AND SPENCER PLC (2001) ECWA CIV 274*** submitted that the Counter Claimants relief seeking for an order of court to compel the 2nd Defendant to Counter Claim execute a joint conveyance document in respect of the disputed property is strange and untenable in law as there is no subsisting contract between them and the 2nd Defendant to the Counter Claim. Counsel therefore urged the Court to dismiss the reliefs sought against the 2nd Defendant to Counter Claim in the Suit.

After a careful appraisal of the entire processes filed by parties, I am of the view that in order to attain the ends of justice, a sole issue which needs to be addressed is:-

“WHETHER THERE EXISTS A CONTRACT BETWEEN THE CLAIMANT, DEFENDANTS/COUNTER CLAIMANTS, AND 2ND

*DEFENDANT TO COUNTER CLAIM FOR A JOINT PURCHASE OF
SHOP Z10 AVE MARIA PLAZA, KUGBO, ABUJA”*

At the outset, it is imperative to answer two questions to wit: -

1. What is a Contract?
2. When will a breach of Contract be said to occur?

In answering the first question raised, the case of **BPS CONSTRUCTION & ENGINEERING Co. LTD V. FCDA (2017) LPELR-SC. 293/2011** is quite instructive. Herein, the Supreme Court held that:-

*"Conversely, my understanding of a 'CONTRACT' is that it is a formal agreement between two or more parties who by so entering into such agreement, they resolve to create obligation or commitment between them to do or not to do a particular thing. In a contract, the basic elements that forms it or makes it binding, is that there is offer, "acceptance" and consideration and these three elements of which must coexist and be properly defined in no uncertain terms. In such agreement, if parties sign it they make themselves bound by it and thereby becoming enforceable on them depending on the terms agreed upon. See *Alfotrin Ltd v. A-G Federation & Ors (1996) 9 NWLR (Pt. 475) 634.*" Per **SANUSI, J.S.C. (P. 86, Paras. A-D)***

It is imperative and I shall now proceed to the second question raised above. In the case of **OBAJIMI V. ADEDEJI (2007) LPELR-CA/1/25/05** the Court of Appeal held that:

"...a breach of contract is committed when a party to the contract without lawful excuse fails neglects or refuses to perform an obligation he undertook in the contract or either

performs the obligation defectively or incapacitates himself from performing the contract. See Adeoti & Anr. v. Ayorinde & Anr. (2001) 6 NWLR (Pt. 709) 336." Per FABIYI, J.C.A (P. 19, paras. C-E)

Also, in **PANBISBILDER NIGERIA LTD V. FBN LTD (2000) LPELR-SC.114/91** the Supreme Court in deciding what a breach of contract connotes held thus:

"A breach of contract connotes that the party in breach had acted contrary to the terms of the contract either by non-performance, or by performing the contract not in accordance with its terms or by a wrongful repudiation of the contract. A party who had performed the contract in consonance with its terms cannot be said to have been in breach thereof." Per AYOOLA, J.S.C. (P. 31-32, paras. G-A)

Furthermore, in the case of **ODULATE V. FIRSTBANK (2019) LPELR CA/L/1450/2016** the Court of Appeal in establishing what a Claimant must show to succeed in an action for breach of contract held thus:-

"...Breach of contract arises in a situation wherein a party to an agreement, fails to perform his own obligations, thereby causing damages to the other party or parties to the agreement, who have taken certain steps on the basis of the agreement. In order to prove breach of contract, the party asserting must clearly show what actions or omissions the defaulting party is guilty of that constitutes the breach. The Supreme Court gave a succinct exposition of the foregoing in the case of BEST NIGERIA LTD. v. BLACKWOOD HODGE NIGERIA LTD. (2011) LPELR-776(SC) (P.42, Paras.D-E) Per Adekeye, J.S.C. thus: "For a claimant to succeed in an action for breach of contract, he must establish not only that

*there was a breach but also that there was in existence an enforceable contract which was breached." See: **DIAMOND BANK LTD V. PAMOB WEST-AFRICA LTD (2014) LPELR-24337(CA);AND JACOB V. AFAHA (2012) LPELR-7854(CA)**. A calm look at the facts of this case shows that the Appellant did not satisfactorily establish breach of contract." Per TUKUR, J.C.A. (Pp. 14-15, Paras. A-D)*

It is now crucial to Juxtapose the cited authorities above to the facts of this case. Summarily, the facts are that the Claimant entered into a Contract with one Mr. Eric Nnaemeka, the son of the 2nd Defendant to Counter Claim being co-proprietors of Ave-Maria Plaza kugbo, for the purchase of a shop known as No. Z10, Ave Maria Plaza, Kugbo Motor Spare Parts Market, Kugbo, Abuja. Based upon this contract, and upon furnishing consideration by the Claimant, documents for the transfer of title and ownership in the shop were issued to him. The 2nd Defendant to Counter Claim received monies for the transaction and stated before the Court that she dealt with the Claimant directly and never had any contract with the Defendants/Counter Claimants regarding the joint purchase of the shop. However, the Defendants/Counter Claimants contend that they had an agreement with the Claimant to jointly purchase the shop in question and that it was pursuant to this agreement that they transferred funds to the 2nd Defendant to Counter Claim. It is now based upon the foregoing that the Claimant *inter alia* seeks a

declaration that he is the rightful owner of the shop in question while Defendants/Counter Claimants *inter alia* are seeking an order of specific performance of the contract which they purportedly entered for the joint purchase of the shop in question. It now behooves on this Honorable Court to lift the veil to decipher the true state of affairs based upon the preponderance of evidence led. As stated above in ***BPS CONSTRUCTION & ENGINEERING Co. LTD V. FCDA (SUPRA)*** for there to be a valid contract, there must certainly be an Offer, an Acceptance and furnishing of consideration. From the facts of the instant case and evidence led, we can glean that there was a contract between the Claimant and Mr. Eric Nnaemeka. Vitally, the 2nd Defendant to Counter Claim was the face of the transaction and duly received the consideration for the transaction, being co-proprietor of the Plaza where the Shop in dispute is situated. This was not rebuffed by the 2nd Defendant to Counterclaim throughout the trial. In fact, the direct effect of this contract is ***Exhibit 6*** tendered by the Claimant which evidences the transfer of title and ownership in the shop to the Claimant. It is therefore not difficult to see that a transaction for the purchase of No. Z10, Ave Maria Plaza, Kugbo Motor Spare Parts Market, Kugbo, Abuja was consummated between the Claimant and Eric Nnaemeka acting through the 2nd Defendant to Counter Claim.

However, what seems in dispute is the issue of an agreement to jointly purchase the shop between the Claimant and Defendants/Counter Claimants. The law is trite that he who alleges must prove, see the Case of ***MRS BETTY DAREGO V. A.G. LEVENTIS (NIGERIA) LTD & 3 ORS LER (2015) CA/L/481/2011.*** Therefore, the burden of proving this alleged fact fell on the Defendants/Counter Claimants. In attempting to prove this, the Defendants/Counter Claimants tendered ***Exhibits Dw1 to Dw4.*** They maintained that the agreement with the Claimant was an oral one and still enjoys enforceability by the Courts. Even though it is true that contracts can be entered into orally, it is however pertinent that the Court is able to infer the intent of Parties from their conduct. Having gone through the entire processes filed, and evidence led before this Court, from the conduct of the Defendants/Counter Claimants, I dare say it is easier for a camel to pass through the eye of a needle than for the Court to infer that there was a contract to jointly purchase the disputed shop.

Firstly, the Defendants/Counter Claimants who were Tenants of the 2nd Defendant to Counter Claim, claim to be joint purchasers of the shop but never jointly went with the Claimant to negotiate the purchase of the shop from the 2nd Defendant to Counter Claim. Therefore, at all material times the contract for the purchase of the shop was between the Claimant and 2nd Defendant to Counter Claim. The Defendants/Counter Claimants

also alleged to have gotten the account details of the 2nd Defendant to Counter Claim from the Claimant. This assertion is unsustainable seeing that the Defendants testimony on record is to the effect that they jointly paid rent to the account of the 2nd Defendant to Counter Claim while they were her tenants. The Court is curious to know how the Defendants/Counter Claimants used to pay their rent to this same 2nd Defendant to Counter Claim if they did not already have her account details. In fact, the testimony of the 2nd Defendant to Counter Claim does not also aid them in this regard as she maintained that it was the Claimant who solely approached her for the purchase of the shop. The Defendants/Counter Claimants transferred monies to the 2nd Defendant to Counter Claim claiming that the sum transferred was in fulfilment of their agreement with the Claimant for the joint purchase of the shop. Surprisingly, the 2nd Defendant to counter Claim was oblivious of this purported agreement and was therefore not *ad idem* on that transaction. The entire situation sparks questions which beg for answers and quite frankly, the Defendants/Counter Claimants have been unable to supply the requisite answers to enable this Court decide in their favour.

It is crass negligence that the Defendants/Counter Claimants never reasoned to discuss or negotiate this purported joint purchase with the actual owner of the shop in question but

instead just sent money to her account which could have been monies for anything.

Time and time again, this Court has been warned not to speculate or conjecture, and in the case of **EJEZIE & ANOR V. ANUWU & ORS (2008) LPELR-1063(SC)** the apex Court held that:-

"A court of law has no jurisdiction to speculate or conjecture.

A court of law must confine itself to the evidence before it and give judgment on the evidence and the evidence alone."

(Dissenting) Per NIKI TOBI, JSC (Pp 55 - 55 Paras C - C)

Most certainly, this Court will be riding on the highway of speculation to place reliance on **Exhibits DW1 to DW4** tendered by the Defendants/Counter Claimants in a bid to ascertain the existence of any contract between the Claimant, Defendants/Counter Claimants and 2nd Defendant to Counter Claim. Moreover, it is trite law that for a valid contract to be formed between two or more parties, there must be mutuality of purpose and intention, in other words, there must be *consensus ad idem*. This was the hallmark of the decision of the Court of Appeal in the case of **DODO V. SOLANKE (2007) ALL FWLR (PT.346) 576 AT 592G-593A** where it held that: -

"A contract is an agreement between two or more parties which creates reciprocal legal obligations to do or not to do a particular thing. For valid contract to be formed, there must be mutuality of purpose and intention. The two or more minds must meet at the same point, event or incident. Where or when they say different things at different times,

they are not ad idem and therefore no valid contract is formed. The meeting of minds of the contracting parties is the most crucial and overriding factor or determinant in the law of contract” Keker Ekun JCA (as she then was)

This Court is a Court of Justice and the only thing inferable by the Court is that no valid contract was entered into between the Claimant, Defendants and 2nd Defendant to counter Claim for the joint purchase of the disputed shop. In essence, there was no *consensus ad idem* between all the Parties for a joint purchase. For this Court to infer anything else would greatly amount to conjecturing and speculation. The Court has tried but has been unable to find that any contract whatsoever exists between the Claimant, 2nd Defendant to Counter Claim and Defendants/Counter Claimants as the testimony and documents tendered by the Defendants/ Counter Claimants are grossly inadequate to prove the existence of a contract for joint purchase of the shop, let alone found a claim for breach of contract before even warranting an order for specific performance.

The Claimant on the other hand duly purchased the shop in dispute as all oral and documentary evidence points towards the truth of that. The Claimant has since served the Defendants with required notices to quit evidenced in **Exhibits 2,3,4 and 5** in order that the Claimant may enjoy quiet possession of the shop in dispute. However, this has not been adhered to by the

Defendants/ Counter Claimants who have instead counter claimed in this action to be declared joint owners of the disputed shop. It is my considered view that the Claimant has placed weightier evidence on the balance of the imaginary scale of justice which warrants a tilting of same in his favour.

To this end, reliefs A and B sought by the Claimant against the Defendants/Counter Claimants succeed. It is on record that the Defendants/Counter Claimants have been in occupation of the shop in dispute and notably received the Writ filed in this matter as occupants of the said shop. The Defendants/Counter Claimants having so been in occupation, the Claimant is entitled to a grant of reliefs C and D sought and same is hereby granted. As per relief E sought by the Claimant, I award the sum of ~~N~~ 200,000.00 in favour of the Claimant and against the Defendants/Counter Claimants jointly and severally being general damages. I further hold that the Counter Claim of the Defendants/Counter Claim is totally devoid of merit and therefore is dismissed.

~~N~~50,000.00 is hereby awarded as cost of filing this suit.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearances

Morris Osakwe:-

For the Claimant

C.NMaduka:-

Appearing with E.U Harrison for the
Defendant/ Counter Claimant